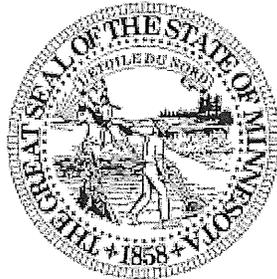


Minnesota Board on Judicial Standards

Annual Report 2003



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STATE OF MINNESOTA
BOARD ON JUDICIAL STANDARDS
2003

Judge Members

Honorable James Dehn
Judge of District Court
Cambridge, MN

Honorable John Holahan
Judge of District Court
Minneapolis, MN

Honorable Gary Pagliaccetti
Judge of District Court
Virginia, MN

Honorable Bruce Willis
Court of Appeals
St. Paul, MN

Attorney Members

Martha Holton Dimick
Shorewood, MN

Robert M.A. Johnson
Anoka, MN

Public Members

Cyndy Brucato
Edina, MN

Jacqueline Hauser
St. Louis Park, MN

Tracey Martin
Brooklyn Center, MN

Elizabeth Hepola
Hutchinson, MN

Staff

David S. Paull
Executive Secretary

Deborah Flanagan
Administrative Assistant

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FORWARD FROM THE CHAIR

The past calendar year was especially active for the Board. There was a 24% increase in written complaints over the previous year. Despite the increase in cases, each Board member evaluated the allegations presented and reached appropriate conclusions based on the facts and the ethical rules.

As this is my last year as a Board member, I want to thank the members of the Board for their hard work and dedication. Because of their efforts, the Board's mission— the protection of the public, the enforcement of appropriate standards of judicial conduct and the maintenance of public confidence in the integrity and independence of the judiciary - has been advanced. I would also take this opportunity to commend the Board's staff for their dedication, commitment and strong work ethic.

Honorable John Holahan
Chairperson

January, 2004

INTRODUCTION

A society cannot function without a procedure to resolve disputes in a fair and impartial manner. The Minnesota Constitution provides for a justice system for this purpose. The preservation of the rule of law and the continued acceptance of judicial decisions depends on citizens' recognition and respect for the judiciary. The Board exists to ensure the fairness and the integrity of the judiciary in Minnesota.

The Board's responsibilities are two-fold:

- to review and investigate complaints of judges' conduct that may violate the Code of Judicial Conduct and to recommend discipline if appropriate.
- to educate the judiciary and the public on the role of the Board on Judicial Standards and on the Code of Judicial Conduct.

The Board's investigation, interpretation and disciplinary process recognizes the unique role of elected judges in our state and it conducts its proceedings to preserve the rights and dignity of the bench, bar and public.

AUTHORIZATION

Minn. Constitution. Art. 6, Section 9, authorizes the legislature to “provide for the retirement, removal, or other discipline of any judge who is disabled, incompetent, or guilty of conduct prejudicial to the administration of justice.” The legislature authorized the court to discipline a judge for “incompetence in performing his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.” The 1971 Legislature created the Board on Judicial Standards to assist in this task and authorized the Supreme Court to make rules to implement judicial discipline. *Minn. Statute 490.15 and 490.16 (1982)*.

ORGANIZATION

The Board has ten members: one judge from the Court of Appeals, three trial court judges, two lawyers who have practiced law in the state for at least 10 years, and four citizens who are not judges, retired judges, or lawyers. All members are appointed by the Governor and, except for the judges, require confirmation by the Senate. Members’ terms are four years and may be extended for an additional four years.

The Board meets at least monthly and more often if necessary. The judge members are not paid but do receive expense reimbursement. Non-judge members may claim standard state per diem, as well as expense reimbursement.

The Board is supported by a two-person staff, the Executive Secretary and the Administrative Assistant. At the direction of the Board, the staff is responsible for reviewing and investigating complaints, maintaining records concerning the operation of the office, preparing the budget, administering the Board funds and making regular reports to the Board, the Supreme Court, the legislature and the public.

CODE OF JUDICIAL CONDUCT

In addition to Minnesota Statutes, the Minnesota Supreme Court has adopted the Code of Judicial Conduct to govern judicial ethics. Intrinsic to the Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The Code may not be construed so as to impinge on the essential independence of judges in making judicial decisions.

The Board considers only complaints involving a judge’s professional or personal conduct. Complaints about the merits of a judge’s decision are matters for the appellate process.

RULES AND PROCEDURES

The rules of the Board are issued by the Minnesota Supreme Court. Under its rules, the Board has the power to investigate allegations of judicial misconduct or on its own motion, to make inquiry into the conduct of a judge, as well as his or her physical or mental condition. If a complaint provides information about conduct that might constitute grounds for discipline, the Executive Secretary conducts a confidential investigation.

As amended on January 1, 1996, the rules permit the Board, upon a finding of sufficient cause, to issue a public reprimand and impose conditions on a judge's conduct or to commence a formal complaint for a public hearing. Upon finding insufficient cause to proceed further, the Board may dismiss, issue a private warning, impose conditions on the judge's conduct, or require professional counseling or treatment. A Board recommendation of censure, suspension or removal can be imposed only by the Minnesota Supreme Court.

All proceedings of the Board are confidential until a formal complaint and response have been filed with the Minnesota Supreme Court. A judge under investigation may waive personal confidentiality at any time during the proceeding.

An absolute privilege attaches to any information or related testimony submitted to the Board or its staff and no civil action against an informant, witness, or his or her counsel may be instituted or predicated on such information.

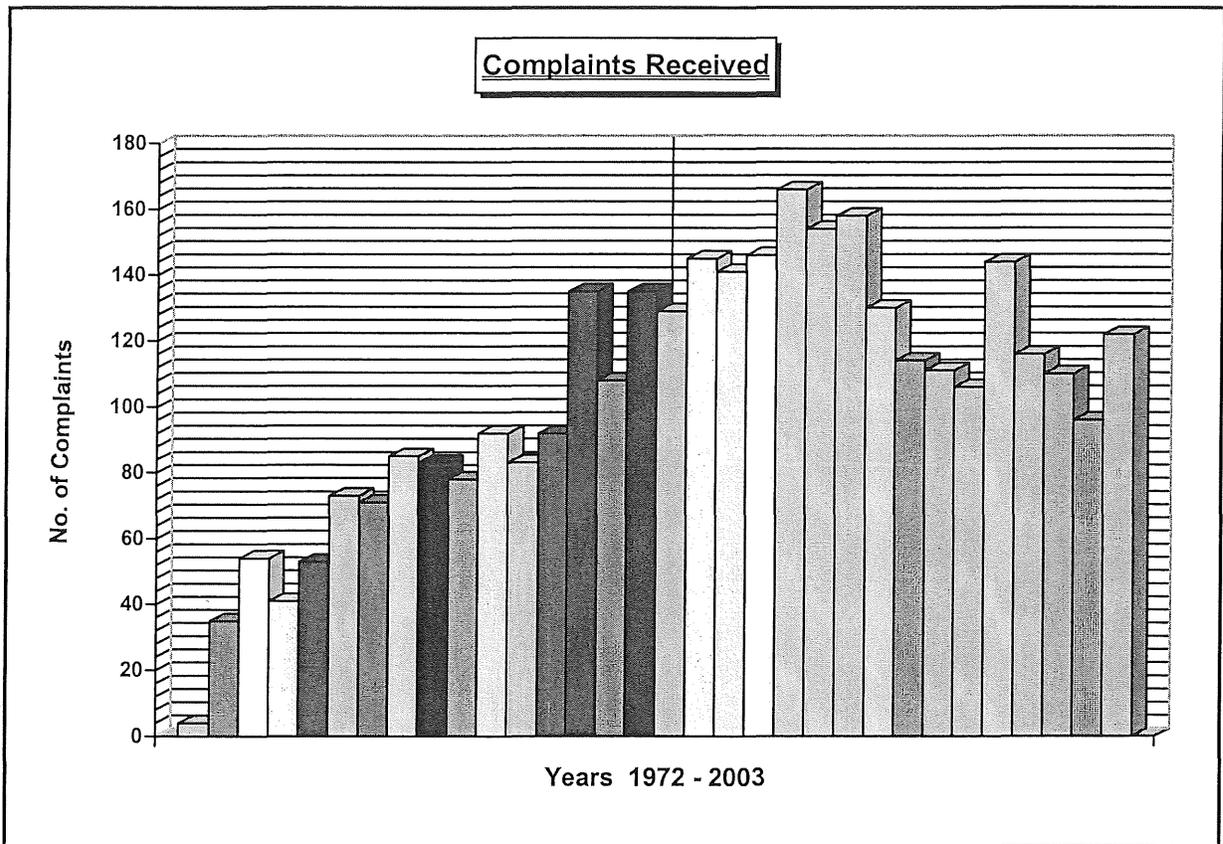
JURISDICTION

The Board's jurisdiction extends to any person exercising judicial powers and performing judicial functions, including judges assigned to administrative duties. During 2003, this included 274 trial court judges; 23 appellate judges; 49 retired judges serving on orders from the Supreme Court, either full or part-time; 41 child support magistrates and the chief administrative law judge. The Board's jurisdiction also extends to 25 full-time referees in Hennepin and Ramsey Counties. The three judges of the Minnesota Tax Court and the five judges of the Workers' Compensation Court of Appeals also come under the authority of the Board.

The Board does not have jurisdiction over court administrators or their employees, court reporters, or probation personnel. Complaints against federal judges are filed with the Eighth Circuit Court of Appeals, as prescribed in 28 USC, Section 372(c).

2003 CASE DISPOSITION

During 2003, the Board received 122 written complaints. The number of complaints received annually by the Board since its creation in 1971 is set forth below:



SOURCE OF COMPLAINTS - 2003

Litigants	72
Inmates/Prisoners	15
Board Motion	14
Other	7
Attorneys	5
Citizens	4
Judiciary	3
Law Enforcement	1
Victim	1
TOTAL	122

ALLEGATIONS REPORTED - 2003

General demeanor and decorum	47
Bias, discrimination or partiality	36
Delay in handling court business	22
Conflict of interest	16
Improper decision or ruling	13
Ex parte communication	13
Improper conduct on the bench	10
Abuse of authority or prestige	8
Failure to perform duties	6
Criminal behavior	6
Failure to follow law or procedure	4
Public comment on pending case	3
Administrative irregularity	2
Practicing law; giving legal advice	2
Chemical dependency	2
Corruption; bribery	1
Health; physical or mental capacity	1
Willful misconduct	1
Reputation of judicial office	1
Attorney unethical conduct	1
Financial activities	1
Profanity or offensive language	1
Sexual misconduct	1
Incompetence as a judge	1
Improper influence	1
Other	1

JUDGES SUBJECT OF COMPLAINTS - 2003

District Court Judges	100
Referees/Judicial Officers	17
Judicial Candidates	0
Court of Appeals Judges	0
Child Support Magistrates	3
Retired - Active Duty	1
Justices - Supreme Court	1
Tax Court Judges	0
Workers Comp-Court of Appeals	0
Chief Administrative Law Judge	0

The Board requested 30 judges to respond in writing to the Board for explanation of their alleged misconduct. Two judges appeared before the Board to discuss or address the complaints. After initial inquiries, nine complaints required additional investigation. One case required a substantial supplemental investigation.

DISMISSAL REASONS - 2003

No misconduct; no violation	38
Insufficient evidence	28
Frivolous, no grounds	14
Within discretion of judge	12
Unsubstantiated after investigation	1
Legal or appellate issues	6
Corrective action by judges	1
Lack of jurisdiction	1
No issue to resolve	1

DISPOSITIONS - 2003

Public reprimands	2
Warnings	8
Personal appearances	2
Visit by board delegation	7
Conditions imposed	1
Other minor adjustments	1

Prior to January 1, 1996, the disposition of cases that resulted in a private reprimand remain confidential.

SAMPLES OF CONDUCT FOUND TO BE IMPROPER

To maintain confidentiality, the Board requires the elimination of certain details of the individual cases summarized below. The purpose of these examples is to educate the public and to assist judicial officers in the avoidance of improper conduct. Rather than omit them completely, the Board believes it is better to provide these abridged versions. References are to the *Minnesota Code of Judicial Conduct*, as revised.

- Delaying decisions in submitted cases for an unreasonable time or failing to issue an order in a submitted case within the statutory 90-day period [*Canon 3A(1) and MS 546.27*]
- Ordering law enforcement personnel to alter standard arrest procedures because the person in custody is a judge or judicial officer [*Canons 1, Canon 2A, Canon 2B and 3A(5)*]
- Failing to act with courtesy, dignity and respect toward all participants in a family matter, especially those parties acting *pro se* [*Canons 1, 2 and 3A(4)*]
- Making public comments in response to questions concerning a pending case other than an official explanation of court procedures [*Canons 1, 2 and 3A(8)*]
- Failing to disqualify in a matter in which the judge's ex-spouse was a party [*Canons 1, 2A and 3D*]

Reprimands imposed by the Board after January 1, 1996, are public. In 2003, two public reprimands were issued to one judge.

Judge Thomas Murphy

The Minnesota Board on Judicial Standards (Board) has issued two public reprimands to First Judicial District Judge Thomas M. Murphy. The first reprimand was administered to Judge Murphy for admitting to driving an automobile while under the influence of alcohol on December 23, 2002. The second reprimand was issued after the Board determined there was sufficient cause to conclude that Judge Murphy initially refused to submit to the standard booking procedure in Dakota County in connection with the driving charge, in violation of Minnesota law. The Board concluded that these actions were contrary to the *Minnesota Code on Judicial Conduct*, *Canons 1, 2A and 2B*, as well as the *Rules of the Board on Judicial Standards*, ("*R.Bd.Jud.Std.*"), *Rules 4(a)(5) and (6)*, as set forth below:

Canon 1
***A Judge Should Uphold the Integrity and
Independence of the Judiciary***

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing standards of conduct, and personally observe those standards in order to preserve the integrity and independence of the judiciary. The provisions of this Code should be construed and applied to further that objective.

Canon 2
***A Judge Shall Avoid Impropriety and the Appearance of
Impropriety in All of the Judge's Activities***

- A. *A judge shall respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.*
- B. *A judge shall not allow family, social, political or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of the office to advance the private interests of the judge or others; nor shall a judge convey or permit other to convey the impression that they are in a special position to influence the judge.*

Rule 4, Rules of the Board on Judicial Standards
Grounds for Discipline

(a) Grounds for Discipline Shall Include:

- (5) Conduct prejudicial to the administration of justice that brings the judicial office into disrepute. . .*
- (6) Conduct that constitutes a violation of the Code of Judicial Conduct or Professional Responsibility.*

March 18, 2003

Judge Harvey C. Ginsberg

The Board initiated public disciplinary proceedings concerning Judge Harvey Ginsberg. A Formal Complaint was filed with the Minnesota Supreme Court alleging Judge Ginsberg's failure to conduct court hearings with appropriate decorum and dignity, ruling in the absence of all parties, retaliation, giving an inappropriate order to a criminal defendant and pleading guilty to the charge of criminal assault. A public hearing is scheduled for January 16, 2004 before a factfinding panel appointed by the Minnesota Supreme Court.

JUDGE'S INQUIRIES

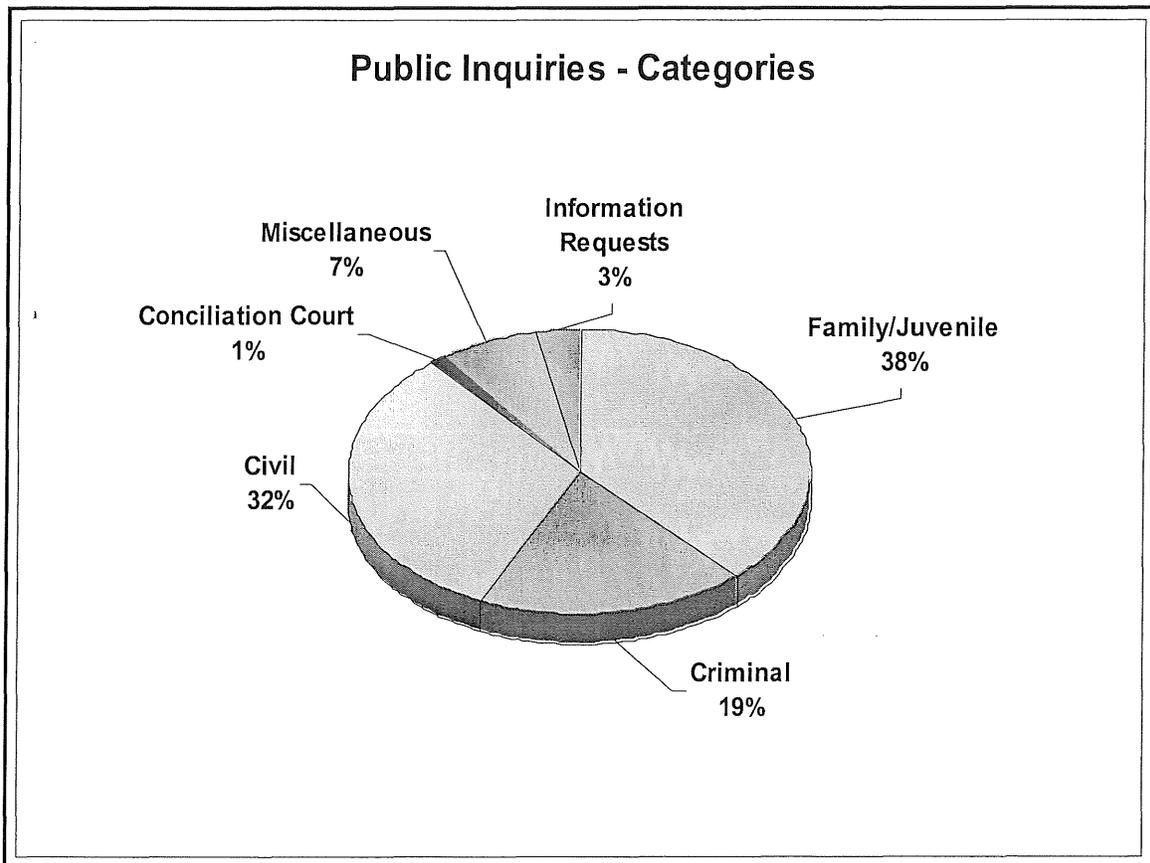
The Board encourages judges who have ethical questions to seek its guidance. The Board will issue a formal advisory opinion to any judge. In 2003, the Board issued eight informal opinions.

Judges regularly contact the Board's staff for information and material on various questions involving the Code of Judicial Conduct. During 2003, there were 186 judge inquiries to the staff.

PUBLIC INQUIRIES

The staff often receives complaints that concern persons over whom the Board has no jurisdiction or that do not allege judicial misconduct.

Staff maintains a daily telephone log of callers who complain about judges or request information. In 2003, the staff responded to 1,088 such calls. The calls are generally from parties involved in a court proceeding and are coded by category; a tabulation of the categories is set out below.



2003 ADVISORY OPINIONS

Each year, the Board issues advisory opinions applying the *Code of Judicial Conduct* to various specific questions submitted by judges. A synopsis of each advisory opinion issued by the Board in 2003 is provided below. References are to the rules of ethics contained in the *Code of Judicial Conduct*, as revised.

- It is appropriate for a judge to attend a public event honoring the retirement of an elected public official, so long as (1) no political activities are anticipated, (2) the judge has not been asked to speak or call special attention to his or her attendance, (3) the event is not organized for the purpose of raising campaign funds and (4) the event is not election related. [*Canons 1, 2, 4A, 4C and 5*]
- It is inappropriate for a judge to engage in fundraising efforts directed to any private person or entity, including in-kind contributions, even if a governmental agency or quasi-governmental agency might eventually benefit. [*Canons 1, 2A, 2B and 4C(3)(b)*]
- It is appropriate for a judge to assist in the drafting and preparation of a non-governmental grant application submitted for the purpose of funding a court dedicated to a special purpose so long as (1) the application is not signed by the judge, (2) the judge does not personally solicit funds or in-kind contributions, (3) the judge is not advised as to the specific results of the solicitation/application process, (4) the judge makes every effort to assure that the person or entity solicited is not aware of the judge's participation in the process and (5) the person or entity solicited is advised that no judge will know whether or not the person or entity was solicited or actually made a contribution. [*Canons 1, 2, 2B, 4A and 4C(3)(b)*]
- It is inappropriate for a judge to sign a letter or endorse a grant application that could advance the commercial or other interest or any person or organization, no matter how worthy the cause or how closely related to the law, the legal system or the demonstration of justice. However, it is appropriate for a judge to prepare and sign a grant application seeking funds from a governmental entity in the regular course of official judicial duties. [*Canon 1, 2A, 2B, 4A, 4C(3)(b)*]
- It is appropriate for a judge to serve on the "advisory board" of a community corrections program organized pursuant to *M.S. 241.31*, so long as (1) the judge signs no fund raising or similar requests on behalf of the board, (2) the judge does not personally solicit funds or in-kind contributions for the board, (3) the judge is not advised as to the specific results of any solicitation for funds, (4) the judge makes every effort to insure that any person or entity solicited for funds is advised that no judge will know whether or not the person or entity was solicited or actually made a contribution and (5) the board is not independently engaged in litigation. [*Canons 1, 2, 2B, 4A and 4C(3)(b)*]

- It is inappropriate for a judge to permit the taking of photographs in the courtroom, including areas immediately adjacent thereto, during sessions of court or recess between sessions unless the photographs will be exhibited only for instructional purposes by educational institutions. [*Canon 3A(10)*]
- Based solely on personal knowledge of pertinent skills and abilities, it is appropriate for a judge to furnish a letter of support for a person seeking (1) employment, (2) admission to an education institute, (3) admission to a bar or (4) appointment to the bench or similar office. [*Canon 2B*]
- It is inappropriate for a judge to raise non-governmental funds for court related projects or activities [*Canon 4C(3)(b)*]